IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

C.W.P. No.15772 of 2007
Date of decision, November 27, 2007

Manjot Kaur

..... Petitioner

Versus

1. **Baba Farid University of Health Sciences through its Vice Chancellor.**
2. **Baba Farid University of Health Sciences through its Registrar.**
3. **Guru Nanak Ayurvadic College, Muktsar through its Principal.**
4. **Guru Nanak Ayurvadic College, Muktsar through its Director.**

..... Respondents

CORAM: HON'BLE MR. JUSTICE J.S. KHEHAR AND
HON'BLE MR. JUSTICE SHAM SUNDER

Present: Mr. Ramesh Sharma, Advocate,
for the petitioner.

Mr. Anupam Gupta, Advocate
for respondents No. 1 and 2.

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Sham Sunder, J.

This judgment shall dispose of Civil Writ Petitions No.15772,16353,16376 and 17793 of 2007 as common question of law and fact is involved therein.

2. The facts are narrated from C.W.P.No. 15772 of 2007 titled as Manjot Kaur Versus Baba Farid University of Health Sciences and others. The petitioner appeared in the entrance test conducted by Baba Farid University of Health Sciences, Faridkot for B.A.M.S. Course. He qualified the test and got admission in Guru Nanak Ayurvedic College, Muktsar in the said course, in the month of August, 2003. According to the petitioner, the duration of the course, referred to hereinbefore was 4 and a half year

with one year internship. There are three professional examinations of this course, which are conducted after one and a half year each, by the University. The petitioner appeared, in the annual examination of Ist Professional, in the month of November-December,2004. Unfortunately, the petitioner got re-appear. She was promoted to the Second Professional. However, she was not allowed to sit in the examination on account of the reason that she should in the first instance, clear the re-appear of Ist Professional. The petitioner cleared the re-appear of Ist Professional in May, 2006. Thereafter, she appeared in the Second Professional examination, in November-December, 2006 and passed the said examination. Thereafter, she was promoted to the third Professional examination, in January, 2007. Since, the third Professional examination, is going to be conducted in the month of November-December, 2007, the petitioner approached the respondents, to allow her to appear in the same along with her other batch mates, who were promoted to the third Professional in August, 2006, but her request was declined, on the ground, that she was promoted to the third Professional in the month of January, 2007, whereas her batch mates, were promoted to the third Professional in July, 2006 and hence, she could not be allowed to appear in the said examination. It was further stated that one student, namely, Manmohan Singh had also got re-appear, in the Ist Professional examination, and before the start of the examination of the second Professional, she was not allowed to sit in the said examination. He filed C.W.P. No. 5461of 2006. seeking direction to sit in the said examination, which was to be conducted in May-June, 2006. The said writ petition was allowed. It was further stated that the action of the respondents, by declining the request of the petitioner to sit

in the third Professional examination, along with other batch mates was totally discriminatory, un-constitutional and arbitrary. Accordingly, the instant petition, for issuance of a writ, in the nature of mandamus, directing the respondents, to allow the petitioner, to sit in the annual examination of third Professional along with other batch mates, which is to commence in the month of December 2007, was filed.

3. The respondents, in their written statement, acknowledged that the petitioner was admitted to B.A.M.S. Course, in Guru Nanak Ayurvedic College, Muktsar. It was stated that the duration of the course is 5 and a half year. It was further stated that in November-December, 2004, the petitioner appeared in the First Professional examination, and could not clear all the papers. However, she was provisionally promoted to the Second Professional course in January, 2005. She cleared the re-appear of the First Professional course in May-June, 2006 and thereafter, appeared and passed the second Professional examination in November-December, 2006. She joined the third Professional course in the month of January, 2007. It was further stated that according to Ordinance 11 (i) B of the University's BAMS Ordinances, the examination of the third Professional (final) shall be held one and a half year after the Second Professional examination. During the third Professional course, the students are required to study six subjects namely Parsooti Tantra Avam Stri Rog, Kaumar Bhrita, Kayachikitsa, Shalya Tantra, Shalakya Tantra and Charak Samhita (Uttarardha).It was further stated that a bare reading of the said Ordinance clearly revealed that the condition of one and a half year was mandatory, and thus, could not be dispensed with, for which reason the petitioner was not eligible to appear in the third Professional

examination, to be conducted in November-December,2007.

4. It was further stated that in C.W.P. No. 17899 of 2004, **Amarbir Singh and others Vs. Baba Farid University of Health Sciences and others** in the case of MBBS course, this Court vide judgment dated 29.3.2005 held that the precondition of one and a half academic year or 18 months study, in the Second Professional course, after passing the First Professional examination in order to be eligible to appear in the Second Professional examination was mandatory. It was further stated that the ratio of Manmohan Singh's case (supra) was not applicable, to the instant case, as in that case, this Court dealt with the issue, as to whether a candidate before clearing the re-appear of the previous examination could appear simultaneously, in the next examination, after he/she had completed the mandatory duration of the course, laid down, under the Ordinances of the University. It was further stated that pursuant to the order dated 16.5.2006 passed in Manmohan Singh's case (supra), he appeared in the Second Professional examination, after one and a half year of study, in the Second Professional course, and passed the same in May/June, 2006. Thereafter, he joined the Third Professional course in July, 2006. Since he had completed study of one and a half year in the Third Professional course, as required under the Ordinances, he was eligible to appear in the Third Professional examination, whereas, the petitioner has completed only 10 months study instead of 18 months, in the Third Professional course, for which reason she was not eligible to appear in the Third Professional examination, to be held in November/December, 2007. The remaining averments, were denied being wrong.

5. We have heard learned Counsel for the parties, and have gone through the record of the case, carefully.

6. The principal question that falls for determination in the instant writ petition, is as to whether, the petitioner is required to complete the curriculum of one and a half year or 18 months study, after the Second Professional examination, for being eligible to appear in the final Professional examination. In this regard, the relevant ordinance 11(i) B of the University reads as under:-

> *"The final Professional Examination shall be held one and half year after the Second Professional Examination and shall comprise the following subjects."*
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> *XX XX XX"*

7. The plain reading of the aforesaid Ordinance, clearly reveals that the petitioner could attain eligibility to sit in the final Professional examination of BAMS course, only after completing the study for one and a half year or 18 months, after the second Professional examination. The University is required to act, in accordance with its Ordinances, relating to a particular course, and not contrary to the same. The facts and circumstances of the instant case clearly reveal that the petitioner appeared in the Second Professional examination in November/December, 2006 and passed the same. She was promoted to the third Professional examination in January, 2007. She could only be eligible, according to the aforesaid Ordinance, to sit in the Third Professional examination, after completing her studies, in the Third Professional course, for a period of 18 months, from January, 2007. Admittedly, she has not completed her studies of 18 months, in the third Professional course after

having passed the examination of second Professional. Since the petitioner was not eligible to sit in the Third Professional examination, to be held in November/December, 2007, for the reasons recorded hereinabove, her request in regard thereto, was rightly declined, by the respondents. In case, the Court directs the University to allow the petitioner to sit in the final Professional examination, to be conducted in November/December, 2007, contrary to the provisions of Ordinance 11 (i) B, that approach would be totally destructive of the scheme of the Medical Education, laid down by the Medical Council of India, and would be highly detrimental to the public interest. The Courts are required to act, in accordance with the provisions of law, and not contrary to the same. No legal right vests in the petitioner, for the enhancement whereof, the writ of mandamus, can be issued to the respondents.

8. It was, however, contended by the counsel for the petitioner, that the petitioner was discriminated vis-a-vis similarly situated persons. He relied upon the order dated 16.5.2006 (Annexure P-3) rendered in C.W.P. No.5761 of 2006 **Manmohan Singh Vs. Vice Chancellor, Baba Farid University of Health Sciences and others** and the order dated 19.11.2007 rendered in C.W.P. No. 17134 of 2007 **Ajay Prem Salhotra and others Vs. Baba Farid University of Health Sciences**, Faridkot through its Registrar in support of his contention. It may be stated here, that in Manmohan Singh's case (supra) he had already completed the study of 18 months, in the second professional course of BAMS, and, as such, was allowed by this Court, to sit in the second Professional examination. In Ajay Prem Salhotra's case (supra) the controversy related to the denial of permission to the petitioners by the University, to sit in the second

Professional examination of MBBS. The facts of the cases referred to hereinbefore, are thus, quite distinguishable, from the facts of the instant case. Moreover, the provisions of Ordinance 11 (i) B of the University's BAMS ordinances referred to hereinbefore, neither fell for interpretation, nor taken into consideration, in these cases. The batch mates with whom the petitioner claims parity, have already completed their study of 18 months in the third Professional course, so as to be eligible to appear in the third Professional examination, to be held in November-December, 2007. So the case of the petitioner is dissimilar to his batch mates. In this view of the matter, it cannot be said that the petitioner has been discriminated vis-a-vis similarly situated persons. No help, therefore, can be drawn by the petitioner from the authorities referred to hereinbefore. The contention of the learned counsel for the petitioner, being without merit, must fail, and the same stands rejected.

9. For the reasons recorded hereinbefore, the writ petition must fail, and the same is dismissed with no order as to costs. However, Baba Farid University of Health Sciences is directed, not to allow any candidate to appear in the third Professional examination, of BAMS course, contrary to the provisions of Ordinance 11 (i) B of the University's BAMS ordinances.

(SHAM SUNDER)
JUDGE

November 27, 2007 **(J. S. KHEHAR)**
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